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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/578,160

08/29/2006

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EXAMINER

BERTHEAUD, PETER JOHN

ART UNIT

PAPER NUMBER

3746

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/578,160	Applicant(s) KAGEBACK ET AL.	
	Examiner PETER J. BERTHEAUD	Art Unit 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2011 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/26/2011 has been entered. It should be noted that claims 1, 6, 7, and 10 have been amended.

Claim Objections

2. Claims 1-11 are objected to because of the following informalities: In line 5 of both independent claims 1 and 10, the phrase, "an air inlet (26) to let an air stream in to the fan inlet (23) placed inside the casing (11)" should be changed to --an air inlet (26) to let an air stream ~~in to~~ into the fan inlet (23) placed inside the casing (11)". Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The reasons for the rejections are listed below:

Independent claims 1 and 10 each recite, “an opening (31) positioned adjacent to the fan wheel (21) and in a location such that the air stream from the air inlet (26) of the casing can pass the engine even if the air stream trying to proceed from the fan housing (24) or the blower tube (14) is blocked” in lines 10-14. This limitation is rendered indefinite because it is unclear if the “the air stream trying to proceed from the fan housing or blower tube” is the same as “the air stream from the air inlet.” In lines 4-5 of the claims 1 and 10 it is stated that an air inlet in the casing lets “an air stream” into the fan inlet. This “air stream” is then referred to as “the air stream from the air inlet” two more times in the claim. However, in lines 12-14, the phrase, “the air stream trying to proceed from the fan housing or the blower tube” is recited. Is this the same air stream as “the air stream from the air inlet”? Or is this a discharge air stream from the fan wheel? Furthermore, reciting that the “air stream is trying to proceed from the fan housing or the blower tube” is also indefinite. In what way is this “air stream trying to proceed?” Is this air stream being moved along by the fan wheel to a discharge opening? Or is there air within the fan housing trying to escape through the fan inlet?

It is the Examiner’s belief that the Applicant is trying to claim that the fan housing is provided with an alternate discharge opening (element 31 in the present Application) which allows the fan wheel (21) to draw the air stream from the air inlet (26) over the engine (20) on its way to the fan inlet (23) even when a main discharge opening in the fan housing (24) or blower tube (14) becomes blocked. If this description could be claimed in a similar fashion, the 35 U.S.C. 112, second paragraph rejection would likely

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be overcome. Nevertheless, claims 1 and 10, along with any depending claims, are rejected as being indefinite.

Claim 4 recites, “the opening (31) in the fan housing (24) is placed near an exit opening (19) in the casing (11) so that heated air is allowed to exit the casing (11).” This limitation is rendered indefinite because it is unclear how the air becomes heated or where it even comes from. There is no mention in independent claim 1, the claim from which claim 4 depends, that the air or “air stream from the air inlet” becomes particularly heated. It is assumed that the air is heated is because it flows over the engine on its way to the fan inlet and enters the fan housing. However, this is not made clear. Thus, the recitation of “heated air” could indicate that the air has been heated in some other way or was heated before it entered the casing. Therefore, claim 4 is rejected as being indefinite. It should be noted that claims 5 and 7 depend from claim 4 and also recite limitations regarding “the heated air”. Claim 11 also depends from claim 4.

Claim 8 recites “that heated air passes through the opening (31) in the fan housing (24) when a blockage is formed anywhere downstream from the fan wheel (21).” This limitation is rendered indefinite because it is unclear how the air becomes heated or where it even comes from. There is no mention in independent claim 1, the claim from which claim 8 depends, that the air or “air stream from the air inlet” becomes particularly heated. It is assumed that the air is heated is because it flows over the engine on its way to the fan inlet and enters the fan housing. However, this is not made clear. Thus, the recitation of “heated air” could indicate that the air has been heated in

some other way or was heated before it entered the casing. Therefore, claim 8 is rejected as being indefinite.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-8 and 11 are rejected, as best as can be understood, under 35 U.S.C. 102(b) as being anticipated by Salisian 6,305,048.

Salisian discloses, regarding claim 1, a blower assembly comprising: at least an engine 50 and a fan (see impeller 40), said fan comprises a fan housing (see the unitary dark housing that directly surrounds impeller 40 and motor 50 in Fig. 2) enclosing a fan wheel 40 and a fan inlet (see the inlet opening in the fan housing on the left side of the impeller 40 in Fig. 2), said engine 50 and fan (40) are surrounded by a casing 10, said casing 10 is provided with an air inlet 20 to let an air stream in to the fan inlet placed inside the casing 10 so that the air stream from the air inlet 20 in the casing 10 to the fan inlet cools the engine 50 and components inside the casing 10 before it enters the fan inlet (again, see the inlet opening on the left side of impeller 40 in Fig. 2), with the engine 50 being located up-stream of the fan inlet with regard to the air stream from the air inlet 20 (see how the air stream from the air inlet 20 will pass the engine 50 before it flows into the housing of impeller 40), and leaves the blower via a blower tube 80 (see

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how the air stream that enters via 20 branches off and cools the motor 50 via opening 52 before it enters the fan inlet that leads to 40 in Fig. 2), characterized in that the fan housing (again, see the dark housing that directly surrounds impeller 40 and motor 50 in Fig. 2) is provided with an opening 52 positioned adjacent to the fan wheel 40 and in a location such that the air stream from the air inlet 20 of the casing 10 can pass the engine 50 even if the air stream trying to proceed from the fan housing 10 or the blower tube 80 is blocked (see how the air stream can pass over the engine 50 via opening 52 and exit the casing 10 via 23 regardless of what is happening with the fan or blower tube assembly; see configuration in Figs.1 and 2); Re claim 2, wherein the opening 52 is placed in a position in the fan housing where the pressure inside the fan housing is low so that the amount of leaking air through the opening 52 is minimized during normal use; Re claim 3, wherein the opening 52 in the fan housing is placed close to the periphery of the fan wheel 40; Re claim 4, wherein the opening 52 in the fan housing is placed near an exit opening 23 in the casing 10 so that heated air is allowed to exit the casing 10; Re claim 5, wherein at least one part of the opening 52 is surrounded by a guiding cover (see the portion of the fan housing that extends beyond the right side of the engine 50 adjacent the intake chamber 20 in Fig. 2; it's located above the engine 50) that leads the heated air from the opening 52 towards the exit opening 23 in the casing 10; Re claim 6, wherein the opening 52 is placed on a side of the fan housing (clearly shown to be on the left side of the fan housing in Fig. 2); Re claim 7, wherein the heated air passes from the fan housing out of the opening 52 and exit opening 23, such that the heated air does not pass through the blower tube 80 in case of complete

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blockage of the air stream through an outlet pipe of the fan housing or the blower tube 80 (see how the air stream in Fig. 2 may pass through opening 52 in the fan housing and may flow directly to exit opening 23 without going to the blower tube 80 via 70); Re claim 8, wherein heated air passes through the opening 52 in the fan housing when a blockage is formed anywhere downstream from the fan wheel 40 (the assembly may perform in this way whether there is a blockage or not); Re claim 11, wherein the exit opening 23 is positioned between the casing 10 and an outlet pipe (see 70 in Fig. 2) (the exit opening 23 can be considered between one end of the casing 10 and the exit pipe at 70 as seen in the configuration in Fig. 1), further wherein the opening 52 is positioned pointing towards the exit opening 23 (see how 52 “points”, in a broadest reasonable interpretation, towards exit opening 23 in Fig. 2).

In addition, it should be noted that while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, because apparatus claims cover what a device is, not what a device does (*Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990)). Thus, if a prior art structure is capable of performing the intended use as recited in the preamble, or elsewhere in a claim, then it meets the claim.

Allowable Subject Matter

7. Claim 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. Allowance is thereby contingent on claim 1 being amended with language similar to that described in section 4 of this Office action. It should be noted that the prior art does not teach or disclose a blower assembly in which a fan housing, surrounded by a casing, is provided with an alternate discharge opening which allows a fan wheel to draw an air stream from a casing air inlet over an engine, thereby cooling it, on its way to a fan inlet even when a main discharge opening in the fan housing or blower tube becomes blocked; wherein the engine is positioned along an axial direction of the fan wheel on a first side of the fan wheel, and further wherein the alternate discharge opening is positioned along the axial direction of the fan wheel on an opposing side of the fan wheel opposite from the engine. It is noted by the examiner, and stated here for the record of prosecution, that the aspect of the instant invention determined to be novel and patentably distinct from the prior art is the engine being positioned along an axial direction of the fan wheel on a first side of the fan wheel, and the alternate discharge opening being positioned along the axial direction of the fan wheel on an opposing side of the fan wheel opposite from the engine. This limitation, in combination with the alternate discharge opening allowing a fan wheel to draw an air stream from a casing air inlet over an engine on its way to the fan inlet even when a main discharge opening in the fan housing or blower tube becomes blocked, makes the claim read over the prior art.

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8. Claim 10 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action. Allowance is thereby contingent on claim 10 being amended with language similar to that described in section 4 of this Office action. It should be noted that the prior art does not teach or disclose a blower assembly in which a fan housing, surrounded by a casing, is provided with an alternate discharge opening which allows a fan wheel to draw an air stream from a casing air inlet over an engine, thereby cooling it, on its way to a fan inlet even when a main discharge opening in the fan housing or blower tube becomes blocked; wherein rotation of the fan wheel defines a rotational orbit, and further wherein the alternate discharge opening is positioned in the fan housing on the periphery of the fan wheel and within the rotational orbit of the fan wheel. It is noted by the examiner, and stated here for the record of prosecution, that the aspect of the instant invention determined to be novel and patentably distinct from the prior art is the alternate discharge opening being positioned in the fan housing on the periphery of the fan wheel and within the rotational orbit of the fan wheel. This limitation, in combination with the alternate discharge opening allowing a fan wheel to draw an air stream from a casing air inlet over an engine on its way to the fan inlet even when a main discharge opening in the fan housing or blower tube becomes blocked, makes the claim read over the prior art.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER J. BERTHEAUD whose telephone number is (571)272-3476. The examiner can normally be reached on M-F 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on (571) 272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PJB
/PETER J BERTHEAUD/
Examiner, Art Unit 3746